

Elkhart, Indiana

An Ordinance Creating and Establishing the Elkhart County, Groundwater Protection Program

Contact: John Hulewicz

Environmental Health Department

(219)875-3391

Adopted: 1989

AN ORDINANCE CREATING
AND ESTABLISHING THE ELKHART COUNTY
GROUNDWATER PROTECTION PROGRAM

Whereas, Indiana Code Sections 36-1-3-1 et seq. permit any county in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its county or internal affair:, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or preempted by any other law or is not expressly granted by any other law to another governmental entity;

Whereas, the Board of Commissioners of Elkhart County and the Elkhart County Board of Health find that it is in the public interest of Elkhart County to establish and create a groundwater protection program;

Whereas, it is desired that the groundwater of Elkhart County be reasonably protected from the improper storage of toxic or hazardous substances;

Whereas, the Elkhart County Board of Health is directed to enforce and observe all State laws and legally promulgated regulations pertaining to the preservation of health and is authorized to adopt such rules and regulations as may be deemed necessary or desirable to protect, promote, or improve public health by Indiana Code Sections 16-1-7-1 et seq.; and

Whereas, pursuant to the authority vested by the Indiana Code Sections 36-1-3-1 et seq., the Board of Commissioners of Elkhart County, Indiana desire to establish and create the Elkhart County Groundwater Protection Program subject to the provisions hereinafter stated;

Now, therefore, be it ordained by the Board of Commissioners of Elkhart County, Indiana as follows:

Section 1 Title

This Elkhart County Ordinance may be referred to as the "Elkhart County Groundwater Protection Ordinance.

Section 2 Purpose

It is the purpose of this ordinance to enhance and preserve the public health, safety, and welfare of persons and property of Elkhart County by protecting the groundwater of Elkhart County from degradation resulting from the improper discharge of toxic or hazardous substances.

Section 3 Definitions

- A. Above ground storage tank any nonportable container, excluding all pipes connected thereto, which is used to store an accumulation of toxic or hazardous substances and In which more than ninety (90) percent of the volume of the storage container is at or above the final ground elevation.
- B. Agricultural of, or pertaining to, property used principally or the the term agricultural production of crops and livestock on a farm. The term agricultural does not include the sale or distribution or toxic or hazardous stances.
- C. Board--the Board of Commissioners of Elkhart County, Indiana.
- D. Board of Health--the Elkhart County Board of Health.
- E. CERCLA--the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.
- F. Commercial or industrial--of, or pertaining to, property used principally for purposes of business, commerce, trade, manufacture, or production.
- G. Discharge--any unintentional or intentional spilling, leaking pumping pouring emitting emptying, releasing, injecting, escaping, leeching, dumping, or disposing into or upon the soil, surface water, or groundwater of Elkhart County.

The term "discharge" when used and applied in this ordinance, does not include the following:

1. proper disposal, in accordance with all legal requirements and in accordance with the requirements of the RCRA and regulations thereunder, of hazardous wastes in a facility that has received and maintained all necessary legal approvals for that purpose;
2. proper disposal, in accordance with all legal requirements, of any substance including special wastes, as defined in the Indiana Stream Pollution. Control Board SPC18 Regulations, as amended, in a sanitary landfill that has received and

maintained all necessary legal approval for that purpose;

3. proper disposal of any substance in compliance with the terms and provisions of a valid municipal, State, or Federal permit;
4. proper disposal, in accordance with all legal requirements, of any substance to a sanitary sewer system that has received and maintained all necessary legal approvals for that purpose;
5. proper application of fertilizers and pesticides in accordance with label requirements and in accordance with the guidelines of the Indiana State Chemist's Office;
6. proper application of road salts and deicing material for the purpose of snow and ice control;
7. proper disposal, in accordance with all legal requirements, of "sanitary sewage" to subsurface sewage disposal systems as defined and permitted by Rule 410 IAC 6-8, et seq. and by Rule 410 IAC 6-10, et seq. of the Indiana Health Code and regulations, as amended;
8. any discharge of a toxic or hazardous substance in a quantity less than the reportable quantity identified therefor under CERCLA or any discharge of a petroleum substance in a quantity less than five (5) gallons.

H. Facility--all contiguous land and related structures, appurtenances, and improvements on land with the same operator. A facility may consist of several operations. For these purposes, contiguous land shall include land separated by a public right-of-way so long as such land would otherwise be contiguous.

I. Health department--the Elkhart County Health Department and also includes any of its authorized agents.

J. Operator--the person or designee in possession and control of the facility, regardless of whether such person is the owner, lessee, or other possessor.

K. Person--individuals, firms, corporations, associations, partnerships, consortiums, joint ventures, and any other legal entity. A corporation and its subsidiaries shall be considered one person.

L. RCRA--the Resource Conservation and Recovery Act of 1976, as amended.

M. Residential--of, or pertaining to, property used principally for a residence.

N. Store or storage--holding a substance prior to or after its use; the terms shall

not include any associated and connected piping.

0. Toxic or hazardous substance:

1. any substance defined in Section 101(14) of CERCLA;
2. petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 F and 14.7 lbs. per square inch absolute); or
3. radioactive and infectious substances as defined by any applicable local, State, or Federal law or regulation.

P. Underground storage tanks any one or a combination of nonportable containers, excluding all pipes connected thereto, which is used to store an accumulation of toxic or hazardous substances, and the volume of which is ten (10) percent or more beneath the surface of the ground.

Section 4 Prohibitions

The negligent, reckless, knowing, or intentional discharge of toxic or hazardous substances is prohibited.

Section 5 Registration Requirements

A. Commercial/Industrial Onsite Wastewater Disposal Systems.

1. Subject to subsection (2) below, every commercial or industrial facility which possesses an onsite waste water disposal system discharging to the ground including septic systems, dry wells, unlined lagoons, oil water separators, or other field absorption systems shall register with the Health Department.
 2. Closed system heat pumps, irrigation systems, storm water systems, and noncontact cooling water systems are not subject to this registration
 3. The registration shall be submitted by the operator of the facility on forms provided by the Health Department and shall contain at a minimum the following information:
 - a. name of the facility;
 - b. street and mailing address of the facility;
- C. designated individual to be contacted;

d. number, type, and location diagram of systems present; and

e. estimated flow rate to each system.

4. Annually, the facility shall furnish to the Health Department a waste characterization for each system which shall be provided by a qualified, independent laboratory. Minimum testing required includes Total Toxic Organics (TTO) and Extraction Procedure Toxic Metals (EP Toxic Metals). The Health Department at any time may require an additional sample be taken with a Health Department representative present and the sample then analyzed at the facility's expense.

5. Registration required under this subsection shall be submitted within six (6) months after the effective date of this ordinance.

6. The operator of a facility shall notify the Health Department within sixty (60) days of any change at the facility except estimated flow rate changes after the initial registration which renders the information contained in the ten existing registration inaccurate.

7. The operator of any facility described in subsection (1) above which is placed in service after the effective date of this ordinance shall register with the Health Department within sixty (60) days after being placed in service and shall meet all other applicable requirements under this ordinance.

B. Hazardous substance storage areas.

1. All facilities which use, store, or generate toxic or hazardous substances in aggregate quantities greater than 100 kilograms per year (approximately equal to twenty-five (25) gallons or 220 pounds) shall register with the Health Department.

2. Registration shall be submitted by the operator of the facility on forms provided by the Health Department and shall contain at a minimum the following information:

a. name of the facility;

b. street and mailing address of the facility;

C. designated individual to be contacted;

d. type of substances stored; and

e. location of storage (indoor/outdoor), with a diagram.

3. Registration required under this subsection shall be submitted within twelve (12) months after the effective date of this ordinance.
4. The operator of a facility shall notify the Health Department within sixty (60) days after:
 - a. any twenty (20) percent increase in the toxic or hazardous substance storage capacity of the facility; or
 - b. any change at the facility whereby any toxic or hazardous substance which was previously stored inside is subsequently stored outside.
5. The operator of any facility described in subsection (1) above which is placed in service after the effective date of this ordinance shall register with the Health Department within sixty (60) days after being placed in service and shall meet all other applicable requirements of this ordinance.
6. A facility shall be exempt from the registration required by this section but only with respect to the following types of storage:
 - a. underground storage tanks other than:
 - (1) farm or residential tanks of eleven hundred (1100) gallons or Less capacity used for storing motor fuel for noncommercial purposes; and
 - (2) tanks used for storing heating oil for consumptive use on the premises where stored.
 - b. hazardous waste storage areas that are regulated under RCRA.
7. Any laboratory that is a facility or any laboratory contained in a facility shall be exempt from the registration required by this section but only with respect to its laboratory activities.

Section 6 Aboveground Storage of Toxic or Hazardous substances

A. This section applies only to the storage of toxic or hazardous substances in containers, whether portable or nonportable, in which more than ninety (90) percent of the volume of the storage container, excluding all pipes connected thereto, is at or above the final ground elevation.

B. Inside storage

Toxic or hazardous substances may not be stored indoors on bare ground or within ten (10) feet of a drain that empties into the ground or that is connected to an

onsite waste water disposal system that drains or empties into the ground.

C. Outside storage

1. Outside storage of toxic or hazardous substance: is prohibited except in product-tight containers.
2. Secondary containment of toxic or hazardous substances stored outside shall be provided and shall be sufficient to store the substances, including an allowance for the expected accumulation of precipitation, for the maximum anticipated period of time necessary for the recovery of any discharged substance.
3. Drainage of precipitation from within any area designed to contain a discharge of a toxic or hazardous substance shall be controlled in a manner that will prevent any toxic or hazardous substance from entering into or upon the soil, surface water, or groundwater of Elkhart County.
4. All applicable State and Federal requirements for storage leak detection, record keeping, spill prevention, emergency response, transportation, and disposal shall be met.
5. Aboveground storage tanks existing and placed in service prior to the adoption of this ordinance shall be exempted from secondary containment provided:
 - a. registration requirements of Section 5 above are met;
 - b. adequate measures shall be provided so as to prevent incidental leaks and spills from contacting the ground at all loading and off loading areas; and
 - c. for all aboveground storage tanks greater than ten (10) years of age, an acceptable means of establishing tank integrity and product tightness shall be utilized by the facility and such information provided to the Health Department every two (2) years unless the facility provides documentation prepared by an independent registered professional engineer of an alternate testing frequency assuring tank integrity and product-tightness. If the facility is unable to establish tank integrity and product-tightness, secondary containment shall be required.
6. Any relocation of an existing aboveground storage tank previously exempted shall be required to comply with all applicable requirements of this section.
7. The provisions of Section 6 shall not apply to agricultural or residential facilities.

Section 7 Report of Discharges

The operator of a facility shall contact the Health Department within twenty-four (24) hours of any discharge of a toxic or hazardous substance in Elkhart County that is owned by and subject to the control of the facility, regardless of whether the discharge occurs on or off of the facility's premises, providing information relating the best available information of what was discharged, how much was discharged, when the discharge occurred, where the discharge occurred, and what corrective action was taken, which report shall be followed within ten (10) working, days by a written report to the Health Department.

Section 8 Records

A copy of the records pertaining to registration under this Ordinance shall be retained for not less than three (3) years, and shall be made available for review by the Health Department upon request. All such copies of the records shall be transferred to any new owner or operator of a facility that is sold, leased, transferred to, or received by a new owner or operator. The transfer of copies of the records shall in no way operate to eliminate or obviate the necessity of the new owner or operator to register with the Health Department as required by this ordinance.

Section 9 Penalties

A. Any person who violates any provision contained in this Ordinance or in any variance granted pursuant to Section 12 may be fined up to One Thousand Five Hundred Dollars (\$1,500.00) for each violation. Each day that a violation continues shall be deemed to constitute a separate violation. In assessing any fine under this Ordinance, the nature of the violation, the seriousness of the violation, the capability of the violator, the harm or potential harm involved by the violation, and any other relevant factor shall be considered.

B. Whenever any violation of this ordinance Is occurring, the Health Officer may order the violation stopped by written notice served on any person violating the ordinance, and such person upon receiving said notice shall immediately cease the violation.

C. The Health Department may institute suit for Injunction in the County's Circuit or Superior Courts to restrain any person from violation the provisions of this ordinance or any rules and regulations established by the Board of Health pursuant to Section 11 below.

Section 10 Enforcement

A. The provisions of this ordinance shall be administered and enforced by the Health Department and the Health Officer.

B. Inspections to assure compliance and to investigate alleged violations of this Ordinance will be conducted by the Health Department in accordance with the requirements of law. Whenever necessary to make an inspection or to enforce this ordinance, the Health Department may enter any facility or premises at all reasonable times upon presentation of proper credentials and demand for entry. If entry is refused, the Health Department shall have recourse to every remedy provided by law to secure entry.

C. Upon request of the Health Department, the owner or operator of any facility at which toxic or hazardous substances are used, stored, or operated shall furnish all Information then currently available to the facility deemed necessary by the Health Department to monitor compliance with this ordinance.

Section 11 Appeals

Any decision of the Health Department or the Health Officer made in enforcement of this Ordinance or any rules and regulations established by the Board of Health pursuant to Section 13 below and any decision of the Board of Health regarding a variance request may be appealed to the board by any person adversely affected by that decision, and the appeal shall be processed under all laws, rules, and regulations applicable to that board. Any appeal to the board must be taken no later than thirty (30) days following written notice of the decision. In addition, any person adversely affected by a decision of the board as a result of an appeal to the board shall have the right of appeal as in other civil action: if such person gives fifteen (15) days written notice of intent to do so to the board by certified U.S. mail. The notice shall concisely state the alleged grievance. It is specifically provided that failure to appeal to the board and exhaust other remedies shall work as a bar to the right to appeal the decision of the Health Department or the Health Officer to the Courts.

Section 12 Variances

A. Although the provisions of this Ordinance are to be followed with strict compliance, certain individual cases may justify the issuance of a variance while still allowing for consistent protection of groundwater resources.

B. All requests for variances must be in writing to the Health Department and must contain all specifications, studies, or evidence showing why such a variance should be granted. The Health Department shall review the variance request and submit its recommendations to the Board of Health.

C. Variances from this ordinance may be granted by the Board of Health after a hearing in compliance with proper public notice at which the applicant establishes that the requested variance will not jeopardize or degrade the groundwater or create other hazards to human health and that requiring strict compliance with the

requirements of this Ordinance would create an undue burden upon the applicant. In granting variances, the Board of Health shall take into consideration the amount and type of toxic or hazardous substances involved; the rate and direction of groundwater flow, soil condition, depth to groundwater, size and slope of site, existing and known future water supplies, and any other relevant factors. All variances shall be site specific, in writing, and include any and all conditions deemed necessary by the Board of Health to assure the protection of the groundwater and to prevent other hazards to human health.

D. In no case shall the Board of Health grant a variance which will violate existing State or federal law or regulation.

Section 13 authority of Board of Health

The Board of Health is authorized to adopt such rules, regulations, and forms as it deem necessary to implement, effectuate, and assure compliance with the requirements of this ordinance.

Compliance with Other Laws

Compliance with this ordinance does not obviate or eliminate the necessity of complying with all other applicable Federal, State, or local laws and regulations with respect to toxic or hazardous substances.

Section 15 Construction

A. To the extent that any provision of this ordinance is ultimately determined by a court of competent jurisdiction to be preempted by any State or Federal law, this ordinance shall automatically be deemed amended by eliminating the preempted provision and incorporating in its place the applicable provision of the preempting State or Federal law.

B. Each provision of this ordinance shall be construed as separate, to the end that if any part of it shall be held invalid for any reason, the remainder shall continue in full force and effect.

C. This ordinance shall not be construed to apply in any respect to any other political subdivision as defined by Indiana Code Section 36-1-2 et seq., other than Elkhart County, Indiana unless such a political subdivision consents to be regulated hereby and subjected to the requirements of this ordinance.

Section 16 Effective Date

This Ordinance shall take effect on the day of _____ 1988.

THE BOARD OF COMMISSIONERS
OF ELKHART COUNTY, INDIANA

By

By

BY

ATTEST:

Auditor of Elkhart County, Indiana